suasive authority and it follows that the Shippers on the facts disclosed so far in this case could not have sued the appellants.

We turn to the contention that the description of the plaintiffs on the title of the writ and the indorsement, notwithstanding the indorsement of the Singapore address in page 3 of the writ, nevertheless referred to the Consignees, C.V. Agung. This submission is untenable. The plaintiffs' address given was the Singapore address, referring unequivocally to the Shippers. The bank guarantee was taken in the name of and for the benefit of the Shippers and for no other party. In the proceedings to set aside the default judgment, the respondents continued to claim that the Shippers were referred to as the plaintiffs who had an interest in the goods.

We have to consider whether the respondents had brought their application within our discretion as set out in Order 20, sub-rules 5(2) and 5(3) of the Rules. These sub-rules were not considered in both hearings below. We have the discretion, but which must be exercised judicially, to allow an amendment even if the effect is to substitute a new party after the expiry of any relevant period of limitation. But it must be shown that the mistake sought to be corrected was a genuine mistake and was either not misleading or not such as to cause any reasonable doubt as to the identity of a plaintiff or a defendant. Counsel for the respondents conceded, quite properly, that the respondents had not brought themselves within the sub-rules. As we had stated earlier, we were not told exactly how genuine was the mistake and the circumstances it had occurred. The mistake and subsequent events in this case in fact led the appellants to believe that the Shippers were the plaintiffs.

We accordingly allowed the appeal with costs here and below.

Appeal Allowed.

Solicitors: *Drew & Napier; Wu & Rajah.*

THE "GREAT LOYALTY"; M.V. "OSWEGO MERCHANT", OWNERS OF v. M.V. "GREAT LOYALTY", OWNERS OF

[O.C.J. (Chua J.) May 5, 1982]

[Singapore — Admiralty In Rem No. 188 of 1974]

Shipping Law — Charter by demise — Who may sue — Whether "demise charterers" can be properly included in description "The owners".

Shipping Law — Maritime lien — Claim for damages as a result of collision — Whether maritime lien attached to vessel — High Court (Admiralty Jurisdiction) Act, (Cap. 6), ss. 3, 4(2) & (3).

The plaintiff's claim was for damages arising out of a collision on July 15, 1974, between their ship "Oswego Merchant" and the defendants' ship "Great Loyalty" in the Singapore Main Strait. As a result of the collison, the "Oswego Merchant" sustained damage and was repaired in Singapore.

On October 21, 1980, liability for the collision was by consent adjudged between the parties on the basis that the plaintiffs were 35% to blame and the defendants 65% to blame. A sum of S$4,590,333.92 and interest at 11% to run from January 1, 1975 was awarded by the Assistant Registrar. The defendants objected to the said decision as regards Items 15 and 18 of the plaintiffs' claim. Item 15 was for "Detention of vessel" amounting to S$1,235,749.59 and Item 18 was for "Crew's Wages" amounting to S$117,961.75.

The defendants claimed that Items 15 and 18 were not incurred by the plaintiffs at all and that they were items claimable, if at all, by the charterers of the "Oswego Merchant" and not by the plaintiffs and that the charterers were not parties to this action.

The main issue was whether the demise charterers were properly included in the description "The owners" as plaintiffs in the writ as held by the Assistant Registrar.

Held, dismissing the defendants' motion: (1) when damage or loss is caused to a vessel as a result of contributory negligence on both her part and that of another vessel, the existence of contributory negligence does not preclude the accrual of a maritime lien against the other vessel;

(2) there was a maritime lien attached to the "Great Loyalty" in respect of the damage done by her when she collided with the "Oswego Merchant" and consequently the jurisdiction of the court may be invoked in this action by virtue of section 4(3) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

(3) in a writ of summons in a collision action *in rem* if the plaintiffs are owners of the ship and are suing as such, it is usual to complete the line in heading against the word "plaintiffs" with the words "The Owners of the vessel "X" and not to name them. Their address, however, is required by O. 6 r. 4. This practice also permits several plaintiffs to sue collectively;

(4) in the present case, since the word "Owners" includes demise charterers when that word is used in connection with limitation of a shipowner's liability, demise charterers ought to be treated as owners for the purpose of maritime liens. The word "Owners" includes the demise charterers.

Cases referred to:-

(1) *The "Father Thames"* [1979] 2 Lloyd's Rep. 364.

(2) *The Ilos"* 166 E.R. 1040.

(3) *The "I Congresso"* [1977] 1 Lloyd's Rep. 536, 558.

ADMIRALTY IN REM.

D.H. Murphy (*K. Parasuram* with him) for the plaintiffs.

P. Selvadurai for the defendants.

Cur. Adv. Vult.

Chua J.: The plaintiffs' claim in this case is for damages arising out of a collision which occurred on July 15, 1974, between their ship "Oswego Merchant" and the defendants' ship "Great Loyalty" in the Singapore Main Strait. As a result of the collision, the "Oswego Merchant" sustained damage and was repaired in Singapore.

On October 21, 1980, liability for the collision was by consent adjudged between the parties on the basis of the plaintiffs being 35% to blame and the defendants being 65% to blame.

The assessment of damages was referred to the Assistant Registrar who awarded the sum of S$4,590,333.92 and an interest rate of 11% to run from January 1, 1975.

The defendants now by motion in objection apply to a judge in court to set aside the decision of the Assistant Registrar as to the damages in so far as the same relate to Items 15 and 18 of the plaintiffs' claim and to totally disallow those two items. Item 15 was for "Detention of vessel" amounting to S$1,235,749.59 and Item 18 was for "Crew's Wages" amounting to

S$117,961.75. The points of the objections are that Items 15 and 18 were not incurred or suffered by the plaintiffs at all and that they were items claimable, if at all, by the charterers of the "Oswego Merchant" and not by the plaintiffs and that the charterers are not parties to this action.

The relevant facts are these. The "Oswego Merchant" is owned by Oswego Merchant Corporation. By a demise charter dated the 17th February, 1971, the vessel was chartered to Gatx Oswego Corporation. By Article 2(a) of the demise charter the "Demise Charterer shall have the full use of the vessel and may employ the vessel as required to perform the Time Charters". Article 2(b) provides:

"(b) Demise Charterers shall have exclusive possession and control of the vessel and shall man, victual, navigate and operate the vessel at its own expense or by its own procurement throughout the Charter period. The master, officers and crew of the vessel shall be engaged and employed by Demise Charterer and shall remain Demise Charter's servants, navigating and working the vessel on behalf of and at the risk of Demise Charterer. The company shall not have any interest in any salvage moneys earned by the vessel or received by Demise Charterer."

The vessel at the date of the collision was under time charter to a third party. The writ *in rem* in this action was issued on the 27th September, 1974, in the name of "The owners of the ship or vessel Oswego Merchant" as plaintiffs against "The owners of the ship or vessel "Great Loyalty" as defendants.

The contention of the defendants is that at the date of the institution of the writ on the 27th September, 1974, the plaintiffs were not in possession of their vessel. The possession and control of the vessel had been transferred to the demise charterers who had the beneficial use of the vessel. The defendants submit that the demise charterers are not the owners of the vessel for the purposes of this action. The defendants say that Item 15, the claim for the detention of the vessel, must be the claim of either the time charterers or the demise charterers, it cannot be that of the plaintiffs. As regards Item 18 — crew's wages — that again is not a claim that can be raised by the plaintiffs since they did not employ the master and the crew and consequently they did not pay their wages.

The main issue here is whether the demise charterers are properly included in the description "The owners" as plaintiffs in the writ as held by the Asst. Registrar.

The contention of the plaintiffs before the Asst. Registrar was that in marine collision cases where a maritime lien was created it was usual to sue in the name of the owners and the word "owners" included also demise charterers. In support of this contention counsel for the plaintiffs cited two authorities — *The "Father Thames"*;[1] *The "ILOS."*[2] The Asst. Registrar was persuaded by these two authorities and he accepted the plaintiffs' contention and accordingly found that the plaintiffs were entitled to claim Items 15 and 18.

Before me counsel for the plaintiffs also relied mainly on *The "Father Thames"* and in particular upon the following passage in the judgment of Sheen J. in which he said (at p. 370):

"The Merchant Shipping Acts

In *Sir John Jackson Ltd.* v. *The Owners of the S.S. Blanche* (1908) A.C. 126 the question which arose for decision was whether the word 'owner' in section 503 of the Merchant Shipping Act, 1894 which must apply to ships on demise charter and in which the word 'owner' must be construed to include a charterer by demise, because on any other construction those sections would be absurd and irrational. Lord Atkinson refers to —

... the special and temporary ownership possessed by a charterer by demise.

That case lends support to the view that in maritime law when the context so requires the word "owner" includes a charterer by demise.

Section 71 of the Merchant Shipping Act, 1906 was enacted to deal with the situation created by the decision of the lower courts in that case the word 'owner' did not include a charterer to whom a ship is demised. The decision of the House of Lords showed that that section was unnecessary.

The decision that the word 'owners' includes charterers by demise when that work is used in connection with limitation of a shipowner's liability lends support to the view that charterers by demise should be treated as owners for the purpose of a maritime lien."

Counsel for the defendants made the following comments on the decision in *The "Father Thames"* and submitted that I should not follow it: —

(1) That case is not relevant in the issue in our case; there the owners of the vessel were the defendants and not the plaintiffs;

(2) In that case as a result of the collision that took place the vessel was subject to a maritime lien at the instance of the plaintiffs;

(3) All the references to the previous cases by Sheen J. where demise charterers were referred to as temporary owners of the vessel or owners *pro hac vice* are to be read with caution as pointed by Goff, J. in *The "I Congresso,"*[3]

(4) For the purpose of the decision in *The "Father Thames"* it was not necessary to refer to the demise charterers as "owners" because, since there was a maritime lien that attached to the vessel in any event, the plaintiffs in that case could have proceeded against the vessel regardless of its ownership by virtue of the maritime lien.

I am unable to accept the submissions of counsel for the defendants on *The "Father Thames."*

The admiralty jurisdiction of the High Court is laid down by section 3 of the High Court (Admiralty Jurisdiction) Act, Cap. 6 (the Act). The present action is concerned with matters which fall within paragraph (d) of sub-section (1) of section 3 and is not a claim to do with the ownership of a ship or forfeiture of a ship. Section 4 of the Act prescribes the mode by which the admiralty jurisdiction of the High Court may be exercised. Section 4(2) deals with claims to the possession or ownership of a ship or forfeiture of a ship. Section 4(3) deals with cases in which there is a maritime lien or other charge on any ship.

When damage or loss is caused to a vessel as a result of contributory negligence on both her part and that of another vessel, the existence of contributory negligence does not preclude the accrual of a maritime lien against the other vessel, (see *Thomas,* Maritime Liens, British Shipping Laws Vol. 14 para. 224).

It is clear that in this case there is a maritime lien attaching to the "Great Loyalty" in respect of the damage done by her when she collided with the

"Oswego Merchant" and consequently the jurisdiction of the court may be invoked in this action by reason of section 4(3) of the Act.

In a writ of summons in a collision action *in rem*, if the plaintiffs are the owners of the ship and are suing as such, it is usual to complete the line in the heading against the word "plaintiffs" with the words "The owners of the vessel "X" and not to name them. Their address, however, is required by Order 6, Rule 4. This practice also permits several plaintiffs to sue collectively. For example, the master and crew of a ship often sue for lost effects, usually on the same writ as the owner, also without being named. The practice is often of particular value in cases of damage to cargo which may consist of parcels belonging to hundreds of plaintiffs (see *Guffie*, Admiralty Practice, British Shipping Laws Vol. 1 para. 156).

The "Ilos" (*supra*) was a case of damage, in which an action was brought in 1854 by Richard Redway, alleged to be the owner of the schooner "Jane Archibald" against the barge "Ilos". An appearance was entered by Tebbs for the owners of the "Ilos". The court pronounced for the damage and condemned Tebb's parties and their bail in such damage, and ordered a reference to the Registrar as to the amount. When the parties came before the Registrar, Tebbs objected to the reference being proceeded with, asserting that he had that morning become aware that George Tanner was the registered owner of the "Jane Archibald" and not Richard Redway, in whose behalf the action had been entered; and that at the date of the collision in question, at the time the action was entered, and at the date of the interlocutory decree, George Tanner was the sole registered owner of the "Jane Archibald." The reference was accordingly adjourned and Tebbs applied by motion to set aside the judgment against his parties. Dr. Lushington rejected the motion and directed the reference to be proceeded with, but stated that if after the damage had been ascertained, any doubt arose as to who was entitled to receive it, he should direct the amount to be paid into the registry and throw upon the party claiming it the onus of establishing his ownership.

After considering the submission of counsel for the plaintiffs and the authorities cited by him, I have come to the view that since the word "Owners" included demise charterers when that word is used in connection with limitation of a shipowner's liability, demise charterers ought to be treated as owners for the purpose of maritime liens.

I found, therefore, that the word "Owners" in this case includes the demise charterers.

The motion of the defendants is dismissed with costs.

Order accordingly.

Solicitors: *Godwin & Co.; Rodyk & Davidson.*

TEO AI CHOO v. LEONG SZE HIAN

[O.C.J. (Sinnathuray J.) May 19, 1982]
[Singapore — Originating Summons No. 165 of 1982]

Land Law — Caveat — Application to remove — No action commenced by caveator — Lapse of 11 months — Removal of caveat on grounds of delay.

The dispute between the parties had arisen from an agreement for sale and purchase of a house in Serangoon Garden signed on September 1, 1979. The defendant lodged a caveat on June 11, 1981. Since then no action had been commenced by the defendant against the plaintiff in respect of the dispute. The plaintiff sought for the removal of the said caveat.

Held: the caveat must be removed forthwith on the grounds of delay alone. There is nothing, however, to prevent the defendant from commencing action against the plaintiff on the alleged claim of breach of trust.

Case referred to:-

(1) *Plimmer Bros.* v. *St. Maur* (1906) 26 N.Z.L.R. 294.

ORIGINATING SUMMONS.

K. S. Chung for the plaintiff.

Ronnie Quek Cheng Chye for the defendant.

Cur. Adv. Vult.

Sinnathuray J.: The matter before me is a simple one. Mr. K. S. Chung for the plaintiff has raised five serious points. I need only deal with the last one, the fifth point, that on the subject of delay.

First, I accept the decision in *Plimmer Bros.* v. *St. Maur.*[1] In that case, Stout, C.J. in New Zealand, on an application to remove a caveat, on facts similar to the present case, where the defendant had commenced no action against the plaintiff relating to the land in respect of which a caveat was lodged, referred to several reported cases and said —

"It was his duty to commence an action promptly if he considered himself entitled to specific performance.... Here nothing was done for nearly sixteen months, and then a caveat was lodged. More than a month has elapsed since then, and still no action has been commenced. In my opinion an action for specific performance under such circumstances would be hopeless, and a caveat under such circumstances must be deemed vexatious... in my opinion, to prevent a man dealing with his property after such a long delay is so inequitable that the court will not lend its assistance to such a proceeding."

Next, there is a Singapore decision of the learned Chief Justice in O.S. No. 192 of 1976 where he held that a delay of 2½ months was sufficient for a caveat to be removed forthwith.

In this case on the facts before me I find that there has been inordinate and inexcusable delay. The dispute between the parties has arisen from an agreement for sale and purchase of a house in Serangoon Garden signed on September 1, 1979. It was not till 21 months later that a caveat was lodged on June 11, 1981. Then, from this date to the date of the hearing of this application on May 7, 1982, no action has been commenced by the defendant against the plaintiff in respect of the dispute, a lapse of 11 months. In these circumstances, having regard to the foregoing, on the ground of delay alone, the caveat must be removed forthwith.

My decision is entirely on the caveat. There is nothing to prevent the defendant from commencing action against the plaintiff on the alleged claim of breach of trust.

I made an Order in Terms of the Originating Summons with costs to the plaintiff. There was liberty to apply.

Application allowed.

Solicitors: *Chung & Co.; Shook Lin & Bok.*